SC92486

IN THE SUPREME COURT OF MISSOURI

ROBERT BATEMAN
and
DONNA BATEMAN,

Appellants,

vs.

CATHY RINEHART,
Clay County Assessor,

Respondent.

On Appeal from the Circuit Court of Clay County
Honorable Larry D. Harman, Circuit Judge
Case No. 10CY-CV05348

SUBSTITUTE REPLY BRIEF OF THE APPELLANTS

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In their opening brief, Appellants Robert and Donna Bateman explained how, under § 137.016.5, R.S.Mo., the State Tax Commission ("STC") erred in holding the "immediate most suitable economic use" of their vacant land, on which the City of Gladstone's zoning code allows only residential use and absolutely prohibits any and all commercial use, was commercial.

The Batemans showed that, as the only case substantially discussing the phrase "immediate most suitable economic use" in § 137.016.5, *Algonquin Golf Club v. State Tax Comm'n*, 220 S.W.3d 415 (Mo. App. 2007), explains, it plainly and unambiguously means the suitable economic use that can occur *most immediately*, not some future speculative use that someday might or might not legally be possible at some hypothetical time. While commercial use someday might well be a suitable economic use for the Batemans' vacant land (as it could be for any vacant land anywhere in Missouri), the substantial and competent evidence in the record, including Respondent's acknowledgement of Gladstone's prohibitory zoning and the admissions of Clay County's appraiser, could not support a finding that commercial use was the *immediate most* suitable economic use of the Batemans' land.

Respondent admits the Batemans' property is zoned for residential use and that the zoning prohibits all commercial use. While Respondent tacitly admits that, as a result, the property cannot be used immediately for any commercial purposes (i.e. without a hypothetical legislative change in zoning), it nonetheless insists "[a]ll of the evidence pointed to the most immediate use as Commercial [*sic*]" (Respondent's Substitute Brief

13). It repeatedly asserts the zoning is irrelevant because § 137.016.5 provides zoning is not conclusive if it does not reflect the immediate most suitable economic use. Essentially, it argues that, because the prohibitory zoning someday might (or might not) be changed, the Court should ignore the term "immediate most" in § 137.016.5.

Respondent's arguments are without merit. As Judge George Draper, writing for the Eastern District in *Algonquin*, plainly explained, for an economic use to be the most immediate, it must *currently* be possible, without legal impediments. An "immediate" use cannot be a future speculative use that, at present, is prohibited by law. It is uncontroverted in this case that, for the Batemans' land to be used in any commercial manner, it would have to be rezoned. Thus, in this case, as in *Algonquin*, the overtly prohibitory zoning *is* conclusive. And, as in *Algonquin*, the STC erred in holding otherwise.

The Court should reverse the trial court's judgment and remand this case with instructions to reverse the STC's decision.

A. There was no substantial or competent evidence that the City of Gladstone immediately would rezone the Batemans' land for commercial use.

In their brief, the Batemans explained that the City of Gladstone zones their property as "R-1, single family," which allows only residential use and absolutely prohibits any and all commercial use: "only one family" is allowed "to live on the property. It does not" even "allow for an owner to rent out a room or portion of the house" (Appellants' Substitute Brief 21-22). Respondent does not dispute this.

But, trying to get around this plain and uncontroverted fact that the applicable law presently (i.e. immediately) prohibits any commercial use of the Batemans' property, Respondent insists in both its statement of facts and its argument, "There was evidence that the City of Gladstone would approve a zoning change to commercial zoning C-O, C-1, or C-2, even though they had declined to approve a request in the year 2000 to allow an unmanned all night filling station as being too intense for the area" (Resp. Br. 7, 13, 15, 19).[1] It states this "evidence" was that "Mr. Maurer, the County's appraiser, testified that the city would favor C-0, C-1, or C-2 zoning" (Resp. Br. 13).

Respondent's appraiser's speculation as to what Gladstone might or might not do, however, was neither substantial nor competent evidence. It is well established that "Evidence based on speculation, conjecture or surmise is not substantial." *Tuf Flight*

[1] In discussing this point, and in other parts of its brief, Respondent refers repeatedly to the opinion of the Court of Appeals in this case (Resp. Br. 13, 21, 24). Respondent apparently does not realize that, as this Court decides appeals post-transfer "as though on original appeal," *Buchweiser v. Estate of Laberer*, 695 S.W.2d 125, 127 (Mo. banc 1985), the "decision of the court of appeals in a case subsequently transferred is of no precedential effect," *Philmon v. Baum*, 865 S.W.2d 771, 774 (Mo. App. 1993), and is "necessarily vacated and set aside and may be referred to as *functus officio*." *State v. Norman*, 380 S.W.2d 406, 407 (Mo. banc 1964). Thus, whatever the lower court decided in this case simply no longer exists. Similarly, Respondent's criticism of the Batemans' earlier reply brief (Resp. Br. 15), superseded by this brief, is misplaced. Rule 83.08(b).

Indus. v. Harris, 129 S.W.3d 486, 491 (Mo. App. 2004). Mr. Maurer admitted the only place he came upon this knowledge was from "reading the information [Mr. Bateman] provided," e.g. the Gladstone Council's 2000 minutes (L.F. 161). While the minutes do reflect that some of the members thought the rezoning application presented "too intense" of a use, others objected to *any* commercial use that close to residences – described by one as "right in the back yards" (L.F. 184-86).

But nothing in those materials amounted to or even indicated anything as specific as substantial or competent "evidence that the City of Gladstone would approve a zoning change to commercial zoning C-O, C-1, or C-2" (L.F. 184-86). Rather, Mr. Maurer's contention both in his testimony (L.F. 161) and in his report (L.F. 213-14) that commercial rezoning was likely was merely his personal speculation – not substantial evidence. *Tuf Flight*, 129 S.W.3d at 491.

Respondent also attacks the Batemans for pointing to the residential character of the property, which is located entirely inside a residential subdivision, Bolling Heights (Resp. Br. 18, 24-25). But that the property partially fronts a cul-de-sac in a residential subdivision, sandwiched between two houses thereon, is plain and unmistakable from the face of the record. While Respondent is correct that there are "commercial uses to the North, West and South" of Bolling Heights (Resp. Br. 18), its own aerial map (Resp. Br. Ex. A; L.F. 253) plainly shows that the Batemans' property is *in* Bolling Heights, on a cul-de-sac, not within some kind of commercial area.

Finally, attempting to make it seem as if Mr. Maurer, the County's appraiser, did not actually opine that the property would not be used commercially during the present

assessment cycle under challenge, Respondent accuses the Batemans of "misquoting" Mr. Maurer, though without citation to the Batemans' brief (Resp. Br. 21). Respondent insists Mr. Maurer meant it was "improbable," rather than "impossible," that the property "would," rather than "could," be used as commercial during the present assessment cycle (Resp. Br. 14-15). Of course, in analyzing the *immediate* most suitable economic use of the land, this is a distinction without a difference. Ultimately, Respondent is forced to admit that "several things" – primarily the prohibitory, residential-only zoning – "ma[de] use of the property as commercial improbable in the 13 months that remained in the assessment cycle" (Resp. Br. 21).

And Mr. Marurer agreed. The exchange between him and Mr. Bateman speaks for itself:

> Q. Okay, what is your opinion on this property being used for a commercial use during the current assessment cycle?
>
> A. I've already answered that question earlier.
>
> Q. What was it? I--I didn't hear it.
>
> HEARING OFFICER JOHNSON: I don't remember it.
>
> MR. BATEMAN: I don't remember that.
>
> THE WITNESS: It--
>
> Q. I'm not asking a value, I--I'm asking you what is your opinion? Do you think it's--it is probable that the property will be used during the current assessment cycle as commercial?

A. That's a two-edged sword. By your definition--By what you're asking, the answer is no. For this cycle.

(L.F. 162-63).

Plainly, given his earlier responses about what it would take to change zoning (i.e. a majority vote of the Gladstone City Council), Mr. Maurer's admitted the property could not be used commercially during the 2009-10 assessment cycle – and certainly not as of January 1, 2009 – as no steps to begin changing that zoning had occurred by the time of the hearing in November 2009.[2]

Despite Respondent's protestations, the fact of the matter remains that the Batemans' property was and is zoned solely for residential use, prohibiting any commercial use. And the only time a request to rezone the property was brought to the appropriate governing body, it was unanimously rejected. Thus, immediately – that is, *now*, not in some speculative future that may or may not come to place – the property is not usable commercially, an only is usable residentially. Thus, while commercial use may be *a* suitable economic use of the property (as it is for any vacant land), it cannot be the property's "immediate most suitable economic use."

[2] Indeed, though the record temporally could not reflect this, the 2009-10 assessment cycle obviously now is over, and the Batemans' property never was re-zoned. To this day, the property remains residentially-zoned, and commercial use remains prohibited.

B. The Court should not overlook the term "immediate most" in § 137.016.5, as Respondent requests.

Respondent's substantive argument rests on a notion that the Batemans' property's prohibitory zoning should be considered but then ignored. Presently, as Respondent admits, the property is zoned R-1, residential, which prohibits any commercial use of any kind (Resp. Br. 7). Essentially, Respondent argues that because the residential zoning *someday might* or *possibly could* be changed to commercial, the property's immediate, prohibitory zoning classification is irrelevant.

As the Eastern District explained in *Algonquin*, however, Respondent's argument untenably renders the term "immediate most" in § 137.016.5 a nullity. And indeed, that is precisely what Respondent requests: that the Court ignore "immediate most" in the phrase "immediate most suitable economic use" (Resp. Br. 14-15).

Both parties agree the "primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning" (Aplt. Br. 15-16; Resp. Br. 11). Thus, as Respondent points out, "The words 'immediate most suitable economic use' should be read in context of the entire phrase" (Resp. Br. 14).

Like the Batemans, Respondent turns to dictionary definitions of the words in the phrase (Resp. Br. 14-15). It defines "suitable" as "fit and appropriate for the end in view" (Resp. Br. 14). It defines "economic" as "Of or relating to the development, production, and management of material wealth" (Resp. Br. 14-15). But then it fails to define "immediate" (Resp. Br. 14-15). The Batemans accept the Respondent's collective

paraphrasing of "suitable economic use" as meaning a use that is "suitable and able to produce the best value for the property" (Resp. Br. 15). But § 137.016.5 does not mandate classifying vacant land by *any* such use. Rather, it expressly requires the suitable economic use be the "immediate most" one.

Indeed, not even Respondent ultimately can keep up its omission of the statute's express requirement of immediacy. Eventually, Respondent is forced to admit, "the plain language of 'immediate most suitable economic use' is the use that is *immediately* suitable and able to produce the best value for the property'" (Resp. Br. 15) (emphasis added). As the Batemans pointed out in their opening brief, one of the same linguistic authorities on which Respondent relies defines "immediate" as "'Occurring without delay [or] not separated by other persons or things [or] having a direct impact" (Aplt. Br. 16). As such, giving meaning to each and every word in the phrase "immediate most suitable economic use" with the same logic Respondent employs, the phrase plainly calls for the use that is suitable and able to produce the best value for the property *which can occur without delay*.

But Respondent ignores this fundamental distinction. It suggests the Batemans "argue that the the [*sic*] zoning makes 'commercial use a legal and practical impossibility" (Resp. Br. 15) (citing Aplt. Br. 21). But that is a conscious misstatement of that page of the Batemans' brief: rather, the Batemans argued, that, in this case, "The zoning was the overwhelming factor: it made any *immediate* commercial use a legal and practical impossibility" (Aplt. Br. 21) (emphasis added). Respondent quotes too selectively. Of course the Batemans' property – like *any* vacant property anywhere in

Missouri – *might possibly someday* ("at some time in the future," to quote Respondent (Resp. Br. 15)) be used as commercial property, regardless of zoning. But § 137.016.5 requires that the use be the "immediate most" one. Here, due to the prohibitory zoning, any hypothetical use as commercial property simply cannot be immediate.

Thus, Respondent is forced to argue, "Whether or not commercial use can begin 'without delay', that is, without changing the zoning has never been the rule, and Appellants site [*sic*] no authority in support of it" (Resp. Br. 13). In so doing, Respondent essentially rehashes St. Louis County's unpersuasive (and unsuccessful) argument in *Algonquin*. The Eastern District held the fact that the zoning *could* change bore nothing on the fact that, at present – immediately – the country clubs' land could not be used commercially. 220 S.W.3d at 420-22. "[T]he phrase 'immediate most suitable economic use'" must be "constru[ed]" "as a whole." *Id.* at 421. As a result, where there are "significant zoning obstacles" to a particular suitable economic use – i.e. an outright prohibition of it by the zoning – it cannot be the "immediate" most suitable one. *Id.* at 421-22. Plainly, *Algonquin* supports this position.

Several times, Respondent attempts to distinguish *Algonquin* by arguing that it "involve[d] the classification of golf course amenities, such as a clubhouse and restaurant," and § 137.016.1(1) "defines Residential [*sic*] property to include 'land used as a golf course'" (Resp. Br. 14, 19). Respondent's suggestion that *Algonquin* did not involve a construal or application of the "vacant land" provision of § 137.016.5, and instead centered on the "residential" provision of § 137.016.1(1), is without merit. While it is true that some golf courses are "residential," that was not the issue in *Algonquin*, as §

137.016.5 applies to "real property … which is used for a private club," just as it does "real property which is vacant …." 220 S.W.3d at 419. As such, the *Algonquin* court rejected tthe proposition that the clubs' land be analyzed under the residential standard, and instead used the "immediate most suitable economic use" standard of § 137.016.5, just as is at issue here. *Id.* at 420-21.

As such, as *Algonquin* explains, Respondent's accusation that the Batemans' necessary focus on the word "immediate" somehow is an "attempt to insert words into the statute that are not there" (Resp. Br. 20), is misplaced. "Immediate most" are words that § 137.016.5 expressly includes in its standard, and they must be given meaning:

> Statutory interpretation is purely a question of law. When interpreting a statute, this Court must determine the intent of the legislature, give the language used its plain and ordinary meaning, and give effect to that intent, if possible. We presume the legislature intended every word, clause, sentence, and provision of a statute to have effect and did not insert superfluous language into the statute.

Algonquin, 220 S.W.3d at 419 (citations omitted).

The point to the Eastern District's decision in *Algonquin* was precisely how the express requirement of "immediacy" factors into the overall standard of "immediate most suitable economic use." While, "as in all cases," "the taxpayer has the burden of proof when challenging the STC's assessment of property," just as here, there was "undisputed, detailed evidence outlining the zoning restrictions which permit the properties to be used for only residential purposes or as private golf courses" and "prohibit commercial

building …." *Id.* at 420. Thus, "if the Clubs ceased operations as private golf courses," the only suitable economic use which could occur immediately "would be as residential developments." *Id.* at 421. "[B]ased upon the *current* zoning restrictions," immediate commercial use was legally impossible. *Id.* (emphasis added).

Thus, the Eastern District finely tuned its conclusion so as to be based on the requirement that the assessor's classified use be *immediately* possible:

> When construing the phrase "immediate most suitable economic use" **as a whole**, the record in this case cannot support a finding that the *immediate* most suitable *economic* use of the properties is as public golf courses. The uncontroverted evidence presented at the hearing reveals the immediate most suitable economic use of the properties at issue is as private residences, not public golf courses. While we acknowledge the Clubs' properties have amenities that **could** be used on a public golf course, the stipulated record also indicates significant zoning obstacles …. In light of those obstacles, we cannot say the record would support an *immediate* use of the private golf course amenities as public golf courses.

Id. at 421-22 (emphasis on words in italics in original; emphasis on words in bold added).

Plainly, "immediate most" is not a phrase "insert[ed] … into the statute that [is] not there," as Respondent desires (Resp. Br. 20). It is express. And in this case, as in *Algonquin*, it is both crucial and controlling. Just as in *Algonquin*, it is undisputed that Gladstone's zoning restrictions permit the Batemans' property to be used only for residential purposes and prohibit all commercial use. Thus, if the Batemans' property

were to be developed now, the only suitable economic use that could occur immediately would be residential development. Based upon the property's current zoning restrictions, immediate commercial use is legally impossible. While the character of the Batemans' vacant property could be used for constructing commercial buildings, the record cannot support an *immediate* commercial use of the property.

As *Algonquin* makes plain, it is not *any* suitable economic use that determines the classification of vacant land under § 137.016.5, but that economic use that is the *immediate most* suitable one. Otherwise, Missouri's 115 counties would have license to classify every piece of vacant real property in the state as commercial property (with the much higher tax rate), as all vacant land by its very nature physically can be used commercially, just as it could in any other manner, too. But, as with the country clubs zoned prohibitorily residentially in *Algonquin*, if the Batemans' residentially-zoned property could not immediately be used commercially (and it plainly cannot), then commercial use, while ostensibly and physically an available suitable economic use, cannot be the *immediate most* suitable one.

In a final attempt to overcome this, Respondent calls repeated attention to the third factor in § 137.016.5, which states, "zoning classification shall not be considered conclusive if, upon consideration of all factors, it is determined that such zoning classification does not reflect the immediate most suitable economic use of the property" (Resp. Br. 18, 20). But this language does not preclude an overtly prohibitory zoning classification allowing only for one use and prohibiting all others, as here and in

Algonquin, from being necessarily conclusive. By implication, it simultaneously permits a property's zoning to "reflect [its] immediate most suitable economic use."

Indeed, one can imagine several scenarios, not present here, in which zoning would not be conclusive. First, a zoning classification might not be prohibitory. A residential zoning classification might allow for some commercial use, as is common in an urban core. Or, a residential classification might allow for some agricultural use, as is common on the outskirts of rural towns. In such a situation, several uses would be immediately open, making the zoning inconclusive. But that is not so here or in *Algonquin*. For the Batemans' property and the St. Louis County country clubs, the relevant zoning is wholly prohibitory: only residential use presently is allowed, and all commercial use presently is prohibited.

Second, a prohibitory zoning classification might be pending a change to a different or more permissive use. If, at the time of the hearing below, the City of Gladstone already had agreed to change the Batemans' zoning to all some commercial use and the change was pending taking effect during the present assessment cycle, obviously the property would not immediately be limited to residential use. Similarly, if Ladue or Warson Woods had agreed to change the country clubs' zoning in *Algonquin* to allow for some commercial use and the change was pending but had not yet taken effect, obviously the about-to-change residential zoning would be inconclusive, too. Again, however, that is not the case here, nor was it in *Algonquin*. When zoning allows only for one use and no change is pending, the immediate most suitable economic use must be the one for which the zoning immediately allows.

The Batemans have no quarrel with the notion that commercial use of their vacant land – like any vacant land – might well be a suitable economic use someday. *See also Algonquin*, 220 S.W.3d at 422 (court's holding that residential use is immediate most suitable economic one "shall remain binding on the parties unless the conditions on said properties change or abate. Just as assessments may be challenged annually, a future assessment may present a record on behalf of the taxpayer or Assessor which may necessitate a change in the [Clubs'] tax classification"). Indeed, the Batemans fully admit – as the Assessor continually reminds the Court (Resp. Br. 8, 12, 15, 20-21, 23-24) – that they unsuccessfully tried to market the property as such.

But § 137.016.5 does not specify that vacant land should be classified by assessment merely by some imaginable suitable economic use: it must be classified by the "*immediate most* suitable economic use." Logically and literally, the immediate most suitable economic use must be the use that is the most immediate. In this case, as in *Algonquin*, there is only one possible use immediately permitted by law: residential use.

Simply put, the law of Missouri is (and must be) that a speculative potential use of land at an unknown time in the future but which is illegal at present with no change pending cannot be its immediate most suitable economic use. Respondent's argument otherwise flies in the face of § 137.016.5's plain language.

C. The Assessor's appraisal of the Batemans' land violates Missouri's requirements for determining the land's highest and best use.

In their opening brief, the Batemans argued the STC's misapplication of § 137.016.5 in upholding the classification of their property as residential property

rendered the Assessor's commercial appraisal of their land unsuitable and irrelevant (Aplt. Br. 26-27). They requested that, on remand, the trial court and/or STC be instructed to disregard the appraisal (Aplt. Br. 27).

Respondent objects that "[t]here is no such rule" "that if this court [*sic*] were to rule that the property should be classified residential, the market value of the property would somehow be different" (Resp. Br. 26). Instead, it argues, "Only the assessment ratio to be applied to the property would be different – 19% as opposed to 32%" (Resp. Br. 26). It suggests, "There is no different 'true value' for Residential, Agricultural, or Commercially [*sic*] classified property" (Resp. Br. 27). This argument violates Missouri's plain law of appraisals.

As Respondent admits, in appraising property, "An appraiser looks at the highest and best use for the property, and values it using a cost approach, income approach and a sales comparison approach," and the STC similarly must "use the highest and best use standard when determining the value of" property under review (Resp. Br. 26). Contrary to Respondent's assertions, however, as with "immediate most suitable economic use," a property's zoning plays a major part in the determination of its "highest and best use" and, thus, its market value.

It is well established that, in appraising a property, the "[p]roperty may not be viewed in a vacuum, in isolation from all its circumstances." *NCR Corp. v. State Tax Comm'n*, 637 S.W.2d 44, 50 (Mo. App. 1982). As such, "In the appraisal of property the properties are compared not only by their physical characteristics, but also by their legal situations." *Id.* A determination of a property's "highest and best use" for appraisal

cannot be based on "fancies, hopes, possibilities or contingencies" as to its use. *City of St. Louis v. Vasquez*, 341 S.W.2d 839, 847 (Mo. 1961).

Thus, "when … land is not available for a certain use by reason of a zoning restriction, its suitability or adaptability for such use may be shown as affecting its value …" *State ex rel. Mo. Highway & Transp. Comm'n v. Pedroley*, 873 S.W.2d 949, 954 (Mo. App. 1994) (quoting *Union Elec. Co. v. Saale*, 377 S.W.2d 427, 429 (Mo. 1964)). Property "must be evaluated under the zoning restrictions existing at the time of" valuation,

> and consideration must be given to the impact on market value of the likelihood of a zoning change. This may be accomplished either by valuing the subject property as rezoned, minus a discount factor to allow for the uncertainty that rezoning will actually take place, or by valuing the property with its existing zoning, plus an incremental factor indicating the probability of rezoning.

State ex rel. Mo. Highway & Transp. Comm'n v. Edelen, 872 S.W.2d 551, 556 (Mo. App. 1994).

In doing this, however, "Mere speculative uses cannot be considered. There must be some probability that the land would be used within a reasonable time for the particular use to which it is adapted." *State ex rel. Mo. Highway & Transp. Comm'n v. Modern Tractor & Supply Co.*, 839 S.W.2d 642, 648 (Mo. App. 1992). And even "if there is a showing of a reasonable probability of a change" in zoning, "the property must not be evaluated as though the rezoning were already an accomplished fact. It must be

evaluated under the restrictions of the existing zoning and consideration given to the impact upon market value of the likelihood of a change in zoning." *State ex rel. State Highway Comm'n v. Carlson*, 463 S.W.2d 74, 80 (Mo. App. 1970).

Whether the highest and best use of a property is residential, commercial, or industrial bears great weight on its value. No authority supports Respondent's assertion that "[t]here is no different 'true value' for Residential, Agricultural, or Commercially [*sic*] classified property" (Resp. Br. 27), nor does Respondent cite any. Indeed, it is well established that the value of a given property whose highest and best use is residential can be vastly different than its value when its highest and best use is deemed to be commercial. *State ex rel. Mo. Highway & Transp. Comm'n v. Delmar Gardens of Chesterfield, Inc.*, 872 S.W.2d 178, 181 (Mo. App. 1994) (value of land as residential property was $617,105, whereas value of same land as commercial property was $1,859,907, and potential rezoning of property affected both determinations).

Mr. Maurer's appraisal, however, fundamentally violated all these requirements (L.F. 197-284). He mentioned that zoning was prohibitorily residential, but forecasted it could be changed to commercial (L.F. 213-14). Then, in determining what was "legally permissible" for the highest and best use, however, he mentioned no aspect of the zoning, but instead suggested the highest and best use was "vacant" (L.F. 223-24). Later still, though, he stated it was his "opinion that the Highest and Best Use of the subject site is for future commercial development" (L.F. 224) or "as a commercial development, not residential or agricultural use" (L.F. 230).

Thus, in reaching his final value determination, he simply valued the land as commercial property (L.F. 238) – likely because his employer, Clay County, told him to. But he did not use either of the two allowed methods of "valuing the subject property as rezoned, minus a discount factor to allow for the uncertainty that rezoning will actually take place," or "valuing the property with its existing zoning, plus an incremental factor indicating the probability of rezoning." *Edelen*, 872 S.W.2d at 556. Instead, he untenably – and incorrectly – valued the property "as though the rezoning were already an accomplished fact." *Carlson*, 463 S.W.2d at 80.

The law of Missouri is that this was unacceptable. Mr. Maurer's appraisal of the Batemans' property as presently commercial real estate should be rejected. It bears nothing on the land's present value as residential real estate.

Conclusion

The Court should reverse the trial court's judgment and remand this case with instructions to reverse the State Tax Commission's decision.

Respectfully submitted,

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Certificate of Compliance

I hereby certify that I prepared this brief using Microsoft Word 2010 in Times New Roman size 13 font. I further certify that this brief complies with the word limitations of Rule 84.06(b), and that it contains 5,009 words.

/s/Jonathan Sternberg
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Certificate of Service

I hereby certify that, on August 22, 2012, I filed a true and accurate Adobe PDF copy of this Substitute Reply Brief of the Appellants via the Court's electronic filing system, which notified the following of that filing:

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